Redevelopment Agency Dissolution Under ABx1 26

Frequently Asked Questions

Q. What are the enforceable obligations for projects partially underway?

Many agencies and parties interested in various projects have asked about instances in which a "project" may have been defined very broadly and within it are various actual or potential land acquisitions, site remediation, site improvements, building construction or reconstruction, and other work. Some contracts may exist for portions of this broadly defined project but other components may not yet be fully obligated by contract with other parties. Work components may be completed or in progress. These questions revolve around what, if any, portions of these projects can be considered enforceable obligations under ABx1 26.

A. The definition of "enforceable obligation" is listed in section 34171 of the Health and Safety Code. The definition includes any "legally binding and enforceable agreement or contract…." Generally, Finance believes in order for an agreement to fit this part of the definition of enforceable obligation, the agreement must be for specific performance with parties that are not the sponsoring agency. Plans, statements of intent, statements of intent to award, designations of project areas, descriptions or lists of projects, or commitments by the agency without any counter party (other than the local agency that formed the redevelopment agency) will not be considered enforceable obligations. Contracts too vague to be enforceable are also not enforceable obligations. Contracts to develop future proposals or future contracts are limited to the work that is specified sufficiently so that it could be enforced. A contract to design something does not imply or become a contract to construct unless such extension or inclusion is specifically called out in the contract and compensation is specified for it, such as in a design-build contract.

While this may result in some work being completed that has little apparent current value, ABx1 26 provides that the oversight board may terminate contracts and provide compensation to avoid wastage of funds. Department of Finance encourages successor agencies and oversight boards to review opportunities to do this as they are constructing and approving Recognized Obligation Payment Schedules.

There are many different fact situations that will arise that we cannot anticipate or provide advance guidance on. Finance encourages parties that are concerned about specific situations to bring them to our attention by submitting questions and information regarding the specific situation to the Redevelopment Administration website. While we cannot promise to provide a quick or definitive answer, we will endeavor to do so whenever possible. We will try to provide a fairly early indication that we think the situation requires further information and review. Please provide the name, phone number and e-mail address of a principal contact person with whom we can follow up.

In those cases where Finance does not initially come to a conclusion or needs further review time, we are prepared to approve the Recognized Obligation Payment Schedule (ROPS) without the questioned item, if that is a practical option. If timing issues require an earlier decision with regard to a Recognized Obligation Payment Schedule, we may

or may not forgo objection at that time but reserve the right to take action under Sec. 34177 (h) or object to the inclusion of the items in a future ROPS.

Q. Can interagency loans be enforceable obligations? Agencies have been the recipients of funds provided by sponsoring agencies. In some instances these have been described as loans. In some instances there have been specified repayment schedules and terms, in other cases no repayment schedule was specified before the operative date of ABx1 26. In some instances the repayment schedules have not been adhered to. Questions have been raised about a variety of these types of situations with regard to whether the repayment is prohibited by Sec. 34171 (d) (2).

A. Except for loan agreements made within the first two years of the life of the agency, or loans that were issued solely for the repayment of debt issued at the time of the contract, the act does not recognize such loans to be enforceable obligations. However, certain loans can be reestablished by agencies complying with provisions of AB 1484 pursuant to Section 34191.4.

Q. Does AB x1 26 or other law require successor agencies to retain all redevelopment agency employees, maintain their current contractual compensation indefinitely, or transfer the employees into city or county jobs unrelated to successor activities?

A. ABx1 26 and labor law generally do not require the retention by the successor of any redevelopment employees. The laying off of represented employees is governed by the applicable memorandum of understanding, if there is one in force. ABx1 26 does require the MOU to pass to the successor agency until it would expire under its own terms and provides some authority to transition employees to jobs within the entity that is also the successor entity. Section 34171 (d)(1) (C) provides clarification regarding the enforceable obligations that may be associated with employees who did redevelopment work.

Q. Does the successor agency merge with or become a part of the city or county that chooses to perform the duties of the successor agency?

A. As stated in Section 34173, successor agencies are separate legal entities. As such, a successor agency is a separate employer from the city or county for labor law purposes. ABx1 26 provides that the liability of the successor agency only extends as far as the money available from tax increment and former assets of the agency will fund. Thus redevelopment employees do not become city employees unless they already were or if they are hired to do a city job at the discretion of the city.

Finance expects that successor agencies will promptly release any employees who no longer have work to do, consistent with the terms of their employment contracts, and retain those employees necessary for the wind down activities. The successor agencies are authorized however, to use any employees they wish to use for this work.

Q. Does the 3 percent limitation on administrative expenses in Sec. 34171 (b) force the reduction of staff and related support expenses to this level immediately?

A. No. The limitation applies only to administrative staff and related expenses funded with property tax. Employees funded with bond proceeds or other project funds do not

count against this limit, nor do employees funded from rents or other revenues or grants. Generally employees working on specific project implementation activities such as construction inspection, project management or actual construction would not be viewed by Finance as "administrative." The ability to fund project oversight work from bond funds may be restricted by the terms of each bond.

Additionally, we view this as a limit on the amount of property tax that may be retained by the successor from each distribution of property taxes. Thus administrative costs funded from retained balances also will not count against this limitation. It is our expectation that oversight boards will exercise prudence in determining administrative budgets and project budgets and determining what funding sources to use so as to preserve the revenues to taxing agencies.

Q. Are unfunded liabilities for pensions and other employee benefits enforceable obligations that must be paid immediately upon dissolution?

A. We expect that many of these costs will be determined to be enforceable obligations up to the date the employees are separated. We expect some reasonable payment schedule or reserving schedule can be arranged. The specific requirements of MOUs or other contractual agreements with retirement systems and others will have to be specifically reviewed. ABx1 26 provides that successor agencies are only liable up to the limit of the total of property tax allocable to the former redevelopment agency.

Q. Are successor agencies responsible for costs of site remediation or environmental damages beyond the funds available to the successor agency from redevelopment revenues and assets?

A. Sec. 34173 (e) states that the liability of a successor agency is limited to the funds transferred to it by ABx1 26. Section 34173 (f) provides that Polanco Redevelopment Act clean-up plans and liability limits transfer to successor agencies and may transfer to housing successors at their request.